

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL A. BASINGER, SR.,	)	
Plaintiff,	)	
	)	
vs	)	Civil Action No. 06-119
	)	
ALLEGHENY COUNTY,	)	
Defendant.	)	

REPORT AND RECOMMENDATION

I. Recommendation:

It is respectfully recommended that the above-captioned case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

II. Report:

On January 27, 2006, Plaintiff, Michael A. Basinger, Jr., filed a complaint against Defendant, Allegheny County. It complains of adverse employment actions based on his age (45), including but not limited to, failure to promote in March 2004, a demotion and transfer in September 2004, and discipline in December 2004. The complaint alleges violations of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (ADEA).

The record shows that the complaint was never served on Defendant, and more than 120 days have passed since the filing of the complaint. In relevant part, Federal Rule of Civil Procedure 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant...

Since Plaintiff has failed to make timely service upon Defendant and more than 120 days have passed, it is recommended that this case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

Within thirteen (13) days after being served with a copy, any party may serve and file written objections to this Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

s/ROBERT C. MITCHELL  
United States Magistrate Judge

Dated: June 20, 2006